

REMARKS/ARGUMENTS

Claims 1-24 are pending. In the Office Action, Claims 1-24 were treated as follows:

1. Claims 1-11 and 13-23 were rejected under 35 U.S.C. § 103(a) as being obvious considering Published U.S. Patent application No. 2002/0147739 to Clements, et al. (hereinafter “*Clements*”) in view of Published U.S. Patent application No. 2003/0110504 to Plourde et al. (hereinafter “*Plourde*”).
2. Claims 12 and 24 were objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form.

Claims 1 and 13 are presently amended to clarify their scope.

35 USC § 103 Rejections

To establish a *prima facie* case of obviousness, Office personnel has the burden to meet three basic criteria. First, Office personnel must show that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. The teaching or suggestion to make the claimed combination **must be found in the prior art**, not based on applicant’s disclosure. Second, Office personnel must show that the teachings in the prior art have a reasonable expectation of success. Finally, Office personnel must show that the combined prior art references teach or suggest all the claim limitations. *See* MPEP § 2142.

Claims 1-11 and 13-23 were rejected under 35 U.S.C. § 103(a) as being rendered obvious by *Clements* in view of *Plourde*. Applicants respectfully submit that the Office Action has failed to state a *prima facie* case of obviousness for at least the following reasons.

Clements in view of *Plourde* does not teach or suggest “temporarily storing additional data from the first data stream in place of at least a portion of the first data...,” as claimed in Claim 1.

Claim 1, as currently amended, recites as follows:

A method of storing streamed presentation data within a container file, the method executing on a **consumer digital content playback device**, the method comprising:

receiving one or more **data streams** from each of one or more presentation sources within the presentation;

creating within the container file, a virtual file for each of the one or more presentation sources;

temporarily storing first data associated with a first data stream of a first presentation source in association with a first virtual file corresponding to the presentation source;

determining a container file size of the container file;

temporarily storing additional data from the first data stream in place of at least a portion of the first data if the container file size is within a predetermined range of an identified maximum buffer size; and rendering at least one of said one or more data streams.

Applicants respectfully submit that Claim 1 is not obvious considering *Clements* in view of *Plourde* because neither reference, alone or in combination, teaches or suggests, “temporarily storing **first data** associated with a **first data stream**... [and] temporarily storing **additional data from the first data stream** in place of at least a portion of **the first data** if the container file size is within a predetermined range of an identified maximum buffer size.” In other words, Claim 1 claims that a portion of first data from stream 1 is overwritten when additional data from stream 1 is stored in its place. For example, according to this element of Claim 1, if space is needed in the container file to store data from the end of a stream, previously stored data from earlier parts of the same stream may be overwritten by the later-received data.

Plourde, by contrast teaches merely that a previously stored media content file may be deleted to make space for a completely different media content file. *See, e.g.*, ¶ [0100], “A new ‘A/V file x+5’ 406 is created for the 10:00 media content instance.... Shortly... the [time shift buffer] capacity will be exceeded. Thus, the PVR application 377 looks for the earliest management file designated as temporary.” In the cited example, the 7:00 media content instance file, “A/V file x+1,” is the earliest file stored in the time shift buffer, and additional space is needed to store a new 10:00 media content instance file. *Plourde* goes on to explain that “[b]ecause ‘A/V file x+1’ 402 [is designated as] temporary, ‘A/V file x+1’ 402 is now deleted....” *Id.* Thus, *Plourde* teaches that a first media content file (x+1) may be deleted to make space for a second media content file (x+5). However, *Plourde* does not teach or even suggest that a portion of a first media content file may be overwritten by additional data from that same first media content file, as claimed in Claim 1. *Clement* does not remedy this defect.

For at least the reasons stated above, Applicants respectfully submit that the Office Action has failed to state a *prima facie* case that Claim 1 is obvious in light of *Clements* in view of *Plourde*.

One of ordinary skill in the art would have had no motivation to combine the teachings of *Clements* with those of *Plourde* to meet the invention claimed in Claim 1.

In the Office Action, the remaining elements of Claim 1 are said to be obvious in light of *Clements* in view of *Plourde*. However, in addition to the defects of *Clements* discussed at length above, Applicants respectfully submit that one of ordinary skill in the art would have had no motivation to combine the teachings of *Clements* with those of *Plourde*.

Recently, the Patent Office published the “Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*,” 72 Fed. Reg. 57,526 (Oct. 10, 2007), which states as follows:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn* stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

Id. at 57,528-29 (quoting *KSR International Co. v. Teleflex Inc.*, 550 U.S. at –, 82 USPQ2d at 1396). The new examination guidelines go on to state that to make a § 103(a) rejection such as in the present case, “Office personnel must... articulate... a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” *Id.* at 57,534.

These guidelines reflect the well-established principle that the prior art must suggest the desirability **of the claimed invention**. MPEP 2143.01. Obviousness can only be established where there is some teaching, suggestion, or motivation to combine or modify the teachings of the prior art **to produce the claimed invention**. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (emphasis added). *See also KSR Intern. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (explaining that it is generally “important to

identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements **in the way the claimed new invention does**” (emphasis added)).

Applicants respectfully submit that the Office Action failed to meet this standard. In asserting that one of ordinary skill would have been motivated to combine the teachings of *Clements* with those of *Plourde*, the Office Action states as follows:

It would have been obvious to one having ordinary skill in the art at the time of the applicant’s invention was made to combine the teaching of *Plourde* with *Clements* reference by implementing a secure document repository to accommodate a delivery of specific type of documents to a specific category of users because both reference are directed to media content distribution and the combined teaching of the references would have provided a media distribution system capable of accurately calculating storage capacity, efficiently storing contents to storage devices and specifically distributing content in according to content types and user categories.

Page 4 (emphasis added). However, there are a number of problems with this asserted motivation.

Motivation is lacking because neither *Clements* nor *Plourde* is “directed to media content distribution.”

First, the asserted motivation is simply inaccurate. In fact, **neither** reference can be said to be “directed to media content distribution.” *Clements* refers to itself as a “document distribution system,” but *Clements* never mentions “media” in the sense of audio or video. In fact, *Clements* has little or nothing to do with media distribution, being directed towards a central repository for computer files that can be accessed across a network. Theoretically, users might store media files in *Clements*’s repository, but *Clements* has at best only an incidental relationship to media. Conversely, *Plourde* is directed towards media, but not towards media **distribution**. Rather, *Plourde* receives and time shifts media for one particular household. Media is not distributed anywhere; it remains on *Plourde*’s hard drive.

Motivation is lacking because neither reference suggests the desirability of making a combination.

Second, the asserted motivation fails to identify a reason that would have motivated one of ordinary skill to combine *Clements* with *Plourde* **in order to produce the invention claimed in Claim 1**. For example, there is absolutely no suggestion in *Clements* that its

teachings would have any relation to a time-shifting video recorder, as is disclosed in *Plourde*. *Clements* is directed towards mechanisms to improve “paperless” communications between businesses and their customers, and more specifically, towards managing large online data stores that can be accessed by multiple individuals. *See ¶ [0006-0007]*. *Clements* never even mentions video, audio, or streaming media of any description, and *Clements* certainly contains no suggestion that there would be any advantage to combining its teachings with any sort of media playback device. Similarly, *Plourde* is concerned entirely with storing documents on a local hard drive, to be accessed by a single user, and contains no suggestion that there would be a benefit to combining its teachings with a multi-user online data repository, such as *Clements*. Accordingly, Applicants respectfully submit that it would not have been at all obvious for one of ordinary skill to combine the teachings of *Clements* with those of *Plourde*.

Motivation is lacking because *Clements* is not directed towards consumer media playback devices.

Claim 1 has been amended to clarify that the steps comprising the method take place on a consumer digital content playback device, such as “wireless mobile phones, palm sized personal digital assistants, notebook computers, desktop computers, set-top boxes, and game consoles.” *See ¶ [0037]*.

Applicant respectfully submits that the preamble to Claim 1 specifically characterizes the scope of the claim to operations that take place in a **“consumer digital content playback device.”** *See, e.g., Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) (“[A] claim preamble has the import that the claim as a whole suggests for it.”); *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999) (“If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.”).

Considering this clarification of the scope of Claim 1, *Clements* is not an analogous reference, being directed towards a server-based central repository in which business users can store and access computer files. *See Clements ¶ [0007]*. Thus, the disclosures in

Clements are directed towards operations that take place on a “central data repository” or server, not a consumer playback device. As such, one of ordinary skill in the art would have had no motivation to combine *Clements* with *Plourde* to arrive at a method executing on a consumer media playback device, as claimed in Claim 1.

Motivation is lacking because *Clements* is not directed towards “receiving one or more data streams.”

Clements is also not an analogous reference because it is not directed towards the type of data “streams” that are claimed in Claim 1. In the Office Action, *Clements* is said to teach “receiving one or more data streams from each of one or more presentation sources within the presentation,” as was previously claimed in Claim 1. As noted by the Office Action, *Clements* does also use the term “stream.” However, the context surrounding its use of that term indicates that *Clements* is using “stream” in an entirely different manner from Claim 1. Specifically, *Clements* uses the term as an abstraction to refer to a method of communication with an Input/Output device or process. *See, e.g., Harry Newton, Newton’s Telecom Dictionary* 654 (1998) (“STREAMS An architecture introduced in Unix System V, Release 3.2 that provides for flexible and layered communication paths between processes (programs) and device drivers.”). For example, *Clements* discloses that various technical mechanisms can be used to store data in a container file, mechanisms such as “streams, files, objects....” *Clements* ¶ [0078]. In ¶¶ [0078], [0079], and [0084], *Clements* states several times that properties may be “stored as a single stream, file, object, or the like.” Thus, every use of the term “stream” in *Clements* refers to an Input/Output stream associated with an open file or device.

Claim 1, however, uses the term “streams” quite differently, referring to data (often media) that may be rendered incrementally, as it is provided. This meaning is spelled out in the specification. *See* ¶ [0003] (the “client device receiving the data should be able to collect the data and send it as a steady stream to the appropriate processing logic equipped to convert the data to sound and/or pictures.”). It is always necessary to review the specification to determine exactly how the inventor has used any particular terms. *Vitronics Corp. v. Conceptronic*, 90 F.3d 1576, 1583, 39 U.S.P.Q.2D (BNA) 1573 (Fed. Cir. 1996). The specification acts as a dictionary when it expressly defines terms used in the claims or when

it defines terms by implication. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). As the Federal Circuit has repeatedly stated, “claims must be read in view of the specification, of which they are a part.” *See id.* at 979, 34 USPQ2d at 1329. The specification is the single best guide to the meaning of a disputed term. *Vitronics*, 90 F.3d at 1583.

Claim 1’s use of the term “streams” is also in accordance with the ordinary meaning of the term. *See, e.g.*, Philip E. Margolis, *Computer & Internet Dictionary* 531 (3rd ed. 1999) (“STREAMING A technique for transferring data such that it can be processed as a... continuous stream. [T]he client... can start displaying the data before the entire file has been transmitted. [T]he client... collect[s] the data and send[s] it as a steady stream to... convert[] it to sound or pictures.”).

Because *Clements* is not directed towards “streams” of data that may be rendered incrementally, as the term is used in Claim 1, Applicants respectfully submit that one of ordinary skill in the art would have had no motivation to combine *Clements* with *Plourde* in order to arrive at the invention claimed in Claim 1

Motivation is lacking because a combination of *Clements* with *Plourde* would not resemble Claim 1.

Finally, even if one of ordinary skill were inexplicably motivated to combine *Clements* with *Plourde*, the resulting invention would not even vaguely resemble that claimed in Claim 1. The Office Action asserts that one would combine *Clements* and *Plourde* to achieve a “secure document repository to accommodate a delivery of specific type of documents to a specific category of users... capable of accurately calculating storage capacity, efficiently storing contents to storage devices and specifically distributing content in according to content types and user categories.” Even if this assertion is correct, it does not render Clam 1 obvious because Claim 1 does not even vaguely resemble the asserted combination. Claim 1 is not directed towards secure document repositories; Claim 1 is not directed towards different categories of users; Claim 1 is not directed towards distributing content. In short, according to the Office Action, the combination of *Clements* and *Plourde* would not lead to the invention claimed in Claim 1, but to some other invention related to secure distribution of content to different categories of users. Accordingly, one of ordinary

skill would not have been motivated to combine *Clements* and *Plourde* to produce the invention claimed in Claim 1, and it cannot be said that Claim 1 is obvious in light of *Clements* in view of *Plourde*.

For at least the reasons just discussed, Applicants respectfully submit that Claim 1 is in condition for allowance. Claim 13 recites similar elements in a machine readable medium claim and is allowable by similar reasoning.

Claims 2-12 and 14-24 are allowable at least by dependency.

Claims 2-12 and 14-24 are allowable at least because they depend from allowable independent claims. However, there are additional bases on which Claims 2-12 and 14-24 are patentably distinguishable over the prior art of record.

Claims 3 and 15 are not taught or suggested by *Clements* in view of *Plourde*.

For a first example, *Clements* in view of *Plourde* does not teach or suggest “temporarily storing second data associated with a second data stream of the first presentation source in association with the first virtual file,” as claimed in Claims 3 and 15. The Office Action appears to suggest that *Plourde* teaches this element by describing a process in which media content instance files are temporarily stored in a time shift buffer made up of succeeding clusters. While *Plourde* may thus disclose “temporarily” and “storing,” Applicants respectfully submit that neither *Plourde* nor *Clements*, alone or in combination, even begins to teach or suggest “**...second data associated with a second data stream of the first presentation source....**”

In addition, *Clements* in view of *Plourde* does not teach or suggest “temporarily store additional data from the **second data stream in** place of at least a portion of the **second data** stored in association with the first virtual file if the container file size is within the predetermined range of the identified maximum buffer size,” as further claimed in Claims 3 and 15. As discussed above, *Plourde* teaches merely that a later “media content instance” may over-write an earlier “media content instance” if an overall buffer size is exceeded. By similar reasoning, *Plourde* does not teach or even suggest storing additional data from the **second data stream in** place of at least a portion of the **second data** (from the second data stream) stored in association with the first virtual file if the container file size is within the

predetermined range of the identified maximum buffer size. Applicants respectfully submit that neither *Plourde* nor *Clements*, alone or in combination, even begins to teach or suggest “additional data from the **second data stream in** place of at least a portion of the **second data** stored...,” as claimed in Claims 3 and 15.

For the reasons just discussed, Applicants respectfully submit that the Office Action has not stated a *prima facie* case of obviousness for Claims 3 and 15. Accordingly, Applicants respectfully submit that Claims 3 and 15 are in condition for allowance.

Claims 5 and 17 are not taught or suggested by *Clements* in view of *Plourde*.

For a second example, *Clements* in view of *Plourde* does not teach or suggest, temporarily storing data associated with a **third data stream of a second presentation source** in association with a **second virtual file**; and temporarily storing additional data from the **third data stream** in place of at least a portion of the data stored in association with the **second virtual file** if the container file size is within the predetermined range of the identified maximum buffer size, as claimed in Claims 5 and 17. As discussed above, *Plourde* teaches merely that a later “media content instance” may over-write an earlier “media content instance”, not that a third stream of a second presentation source may be stored in association with a second virtual file. Applicants respectfully submit that the Office Action has not stated a *prima facie* case of obviousness for Claims 5 and 17 and that Claims 5 and 17 are in condition for allowance.

Claims 6 and 18 are not taught or suggested by *Clements* in view of *Plourde*.

For a third example, *Clements* in view of *Plourde* does not teach or suggest, “the maximum buffer size is proportional to an **amount of time indicated via a user interface**,” as claimed in Claims 6 and 18. The referenced section of *Plourde* teaches merely that the capacity of a buffer may be estimated. However, neither *Plourde* nor *Clements*, alone or in combination, teaches or even suggests a buffer size is proportional to an **amount of time indicated via a user interface**, as claimed in Claims 6 and 18. Applicants respectfully submit that the Office Action has not stated a *prima facie* case of obviousness for Claims 6 and 18 and that Claims 6 and 18 are in condition for allowance.

Claims 7 and 19 are not taught or suggested by *Clements* in view of *Plourde*.

For a fourth example, *Clements* in view of *Plourde* does not teach or suggest, “the maximum buffer size is **dynamically increased** during the storing of data from the first data stream,” as claimed in Claims 7 and 19. The referenced sections of *Plourde* and *Clements* teach merely that free space and file size may be tracked. However, neither *Plourde* nor *Clements*, alone or in combination, teaches or even suggests a buffer size is **dynamically increased**, let alone that it is dynamically increased, **during** the storing of data from the first data stream, as claimed in Claims 7 and 19. Applicants respectfully submit that the Office Action has not stated a *prima facie* case of obviousness for Claims 7 and 19 and that Claims 7 and 19 are in condition for allowance.

Claims 9 and 21 (and 11 and 23) are not taught or suggested by *Clements* in view of *Plourde*.

For a fifth example, *Clements* in view of *Plourde* does not teach or suggest, “**each virtual file** comprises... a **seek index** and a seek index granularity, wherein the seek index indicates a **plurality of equally distributed data blocks** within the corresponding virtual file and the granularity indicates a **size for each of the data blocks**,” as claimed in Claims 9 and 21. The referenced sections of *Plourde* teaches merely that a File Allocation Table on a hard drive keeps track of document locations and that users may search out media content based on various filters. *Plourde* does not teach or suggest a virtual file, let alone that **each virtual file** (not merely one hard drive with a FAT) comprises an individual seek index and an individual seek index granularity, as claimed in Claims 9 and 21. Furthermore, while *Plourde* admittedly uses the work “seek,” neither *Plourde* nor *Clements*, alone or in combination, teaches or even suggests “the seek index indicates a **plurality of equally distributed data blocks** within the corresponding virtual file and the granularity indicates a **size for each of the data blocks**,” as claimed in Claims 9 and 21. Applicants respectfully submit that the Office Action has not stated a *prima facie* case of obviousness for Claims 9 and 21 and that Claims 9 and 21 are in condition for allowance.

To the extent that Claims 11 and 23 also refer to the seek index granularity just discussed, Claims 11 and 23 are in condition for allowance by similar reasoning.

Applicants can discern nothing in the prior art made of reference and not relied upon that would, when read as a whole, anticipate or render obvious any of Claims 1-24.

CONCLUSION

For at least the reasons above, Applicants respectfully submit that Claims 1-24 are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments presented are believed sufficient to address the Examiner's rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,
AXIOS LAW GROUP

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